

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	:	EXPEDITED PROCEDURE
	:	:	Response under 37 CFR 1.116
Yasushi SAYAMA et al.	:		
	:		
Serial No. 10/720,488	:	:	Group Art Unit: 3763
	:		
Filed: November 25, 2003	:	:	Examiner: MELANIE JO HAND
	:		
For: DISPOSABLE DIAPER			

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

**Mail Stop AF**  
COMMISSIONER FOR PATENTS  
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Sir:

This paper is submitted in reply to the Final Office Action mailed *January 9, 2007*.

Applicants respectfully request review of the final rejections of claims 2, 5, and 11-21 as manifested in the Final Office Action. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal in compliance with *37 CFR 41.31* and the fee set forth in *37 CFR 41.20(b)(1)*.

The review is requested for the reasons stated on the attached sheets.

### REASONS

The following clear errors are found in the Examiner's rejections.

1. The 35 U.S.C. 103(a) rejection of claims 2, 5, 11, 13-14, 16, 18-20 as being obvious over *Kline* in view of *Sherrod* is clearly erroneous, because (i) the references are not properly combinable and (ii) the references combined in the manner proposed by the Examiner would fail to teach or disclose all limitations of, at least, the rejected independent claims.

With respect to (i), independent claim 11 finds support in Figs. 2-3 which disclose, among other things, antislip zones 44 on the outer surface of the diaper's main portion and on opposite sides of landing zone 26 (Fig. 2). The antislip zones 44 are contactable with predetermined areas A (Fig. 3) of the inner surfaces of the proximal ends of wing portions 18, when wing portions 18 are attached to landing zone 26, to resist relative movement between wing portions 18 and the waist region having the antislip zones 44. Independent claim 13 includes (at lines 17-20) limitations similar to independent claim 11. Thus, the claimed antislip zones are arranged for contacting and resisting relative movement between components of the diaper. In contrast, the *Sherrod* skid-resistant coating is arranged to contact with external objects to maintain the garment in use. Thus, the references are not combinable to provide the *Sherrod* skid-resistant coating in regions where components of the *Kline* diaper contact each other in the presently claimed manner, as argued in the September 20, 2006 Amendment at page 12, lines 3-14 which is incorporated by reference herein..

The Examiner's response <sup>1</sup> to the above argument is noted. Applicants respectfully disagree with the Examiner's position, because the fact is that *Sherrod* does not teach or suggest to arrange the anti-skid coating in regions where the anti-skid coating is contactable with other parts of the diaper. The primary purpose of *Sherrod* is to prevent relative movement between the diaper and the wearer's garment. Thus, a person of ordinary skill in the art would understand that to arrange the *Sherrod* anti-skid coating in regions where it can only contact other parts of the diaper would not serve the primary purpose of the reference. Therefore, the person of ordinary skill in the art would have not considered to arrange the *Sherrod* anti-skid coating in such regions of the *Kline* diaper and would not have been motivated to combine the references as proposed by the Examiner.

Of particular note, the Examiner's allegation that "*Sherrod* teaches coating a bottom sheet 28 with an anti-skid coating over substantially all of said sheet" <sup>2</sup> is incorrect. *Sherrod* does not teach such, as can

<sup>1</sup> See the January 9, 2007 Final Office Action at page 3, lines 1-9.

<sup>2</sup> See the January 9, 2007 Final Office Action at page 5, lines 4-5 from bottom.

be seen, for example, at 30 in Fig. 2 of the reference.

With respect to (ii), independent claims 11 and 13 recite, among other things, that the antislip zones comprise a mixture of elastic fibers and inelastic fibers. *Sherrod* fails to teach or suggest fibrous antislip zones because the reference only discloses a coating. Thus, the Examiner's combination of *Sherrod* and *Kline*, if proper, would lack the highlighted claimed feature, as argued in the September 20, 2006 Amendment at page 12, line 15 through page 13 line 2 which is incorporated by reference herein.

The Examiner's response <sup>3</sup> to the above argument is noted. Applicants respectfully disagree with the Examiner's position, because the fact is that *Sherrod* does not teach or suggest fibrous anti-skid zones as presently claimed. The reference only discloses a coating which, as argued above, has no fibrous nature.

The Examiner's reliance on *Kline* at column 5 lines 14-17 <sup>4</sup> is misplaced, because the cited portion is related to the backsheet rather than to an anti-skid coating. A person of ordinary skill in the art would further understand that in the Examiner's proposed *Kline*/*Sherrod* combination (if proper), the backsheet of *Kline* would be covered by the anti-skid coating of *Sherrod* and would not be "contactable with predetermined areas of the inner surfaces of the... wing portions" as required by the independent claims.<sup>5</sup> Thus, the portions of the backsheet of *Kline* that underlie the *Sherrod* antiskid coating do not meet the definition of the claimed anti-slip zone. The claimed anti-slip zone is met, if at all, solely by the coating of *Sherrod* which has no fibrous nature.

The Examiner's reliance on *Sherrod*'s reference to *McCormick* (U.S. Patent No. 6,075,179)<sup>6</sup> is also misplaced, because *Sherrod* refers to *McCormick* for a disclosure of materials suitable for bottom-sheet or backsheet 28.<sup>7</sup> Thus, as argued immediately above the *McCormick* teachings do not define any anti-slip zone and cannot be considered as evidence that it was known in the prior art to provide fibrous anti-slip zone.

For any of the reasons (i) and (ii) presented above, Applicants respectfully submit that the obviousness rejection of all pending claims is clearly erroneous and should be withdrawn.

2. The 35 U.S.C. 103(a) rejection of claims 5, 12, 15, 17 and 21 as being obvious over *Kline* in view of *Sherrod* and further in view of *Damberg* is clearly erroneous, because (i) *Damberg* is not properly combinable with *Kline* and *Sherrod* and (ii) the reference also fails to teach or suggest the fibrous

<sup>3</sup> See the January 9, 2007 Final Office Action at page 3, lines 15-17.

<sup>4</sup> See the January 9, 2007 Final Office Action at page 3, lines 10-19.

<sup>5</sup> See independent claim 11 at lines 5-6 from bottom, and independent claim 13 at lines 18-19.

<sup>6</sup> See the January 9, 2007 Final Office Action at page 3, lines 17-19.

<sup>7</sup> See *Sherrod* at paragraph [0034].

nature of the claimed anti-slip zone.

(i) With respect to (i), *Damberg* is non-analogous art<sup>9</sup> that cannot be combined with *Kline* and *Sherrod*. In particular, *Damberg* is not in the field of applicant's endeavor, because it belongs to a completely different field of search. Note, for example, that *Damberg* is classified in class 264 whereas *Kline* and *Sherrod* are classified in classes 604 and 442. *Damberg* would not have logically commended itself to an inventor's attention in considering his problem in the diaper art, because the reference relates to molded parts<sup>9</sup> which are well known in the diaper art as being unusable in diapers due to their excessive strength and hardness.<sup>10</sup> Given the unrelatedness of *Damberg* to the diaper art and the inapplicability of the *Damberg* strong, hard molded products in diapers, a person of ordinary skill in the art would not have been motivated to combine *Damberg* with *Kline* or *Sherrod*, contrary to the Examiner's rationale.

(ii) With respect to (ii), *Damberg* fails to cure the deficiency of *Kline* and *Sherrod*, i.e., the *Sherrod* non-fibrous antiskid coating. *Damberg* discloses a process of producing parts from polymeric particules upon the application of heat and pressure.<sup>11</sup> The process disclosed in *Damberg* includes mixing, heating, pressing and curing.<sup>12</sup> A person of ordinary skill in the art would understand that the final products of *Damberg* will either maintain the particulate nature of the ingredients or have a film structure. The final product of *Damberg* will not have a fibrous nature, unlike the claimed anti-slip zone. Therefore, even if *Damberg* could be properly combined with *Kline* and *Sherrod*, the antiskid coating of the combined article would still fail to include the claimed fibrous anti-slip zone.

For any of the reasons (i) and (ii) presented above, Applicants respectfully submit that the obviousness rejection of claims 5, 12, 15, 17 and 21 is clearly erroneous and should be withdrawn.

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<sup>9</sup> "In order to rely on a reference as a basis for rejection of an applicant's invention [under 35 U.S.C. 103(a)], the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also *In re Deminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992) ("A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem."); and *Wang Laboratories Inc. v. Toshiba Corp.*, 993 F.2d 858, 26 USPQ2d 1767 (Fed. Cir. 1993). See MPEP, section 2141.01(a).

<sup>9</sup> See *Damberg* e.g., at Abstract, column 2 lines 39-42 and 52-57.

<sup>10</sup> See *Damberg* at column 5 lines 56-58.

<sup>11</sup> See *Damberg* at Abstract, column 1 line 59, column 2 lines 1 and 7, column 3 lines 43-58, and the paragraph bridging columns 3-4.

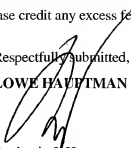
<sup>12</sup> See *Damberg* at column 4 line 30 through column 5 line 19.

Withdrawal of the final rejections of claims 2, 5, and 11-21 in view of the above is believed appropriate and therefore respectfully requested.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

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